1867.
March 21.

Special Appeal No. 572 of 1865.

LÁLDÁS RÁMDÁS ..... *Appellant.*

KÁSHIRÁM ..... *Respondent.*

Usufruct—Enjoyment—Burden of Proof—Ancient Documents.

In a suit to prevent the defendants from obstructing the plaintiff in his enjoyment of the fruits of certain trees, which he claimed as heir of a person who purchased that right, the defendants denied the existence of the right, and alleged possession and enjoyment in themselves.

Held, that the District Judge, in appeal, having found the possession and enjoyment to be in the defendants, was right in throwing upon the plaintiff the burden of proving his title to the trees or their produce.

Rule of Evidence with reference to ancient documents stated.

THIS was a special appeal from the decision of W. M. Coghlan Acting Judge of the Khándesh District, in Appeal Suit No. 149 of 1864, reversing the decree of the Munsif of Nandurbár.

The case was heard before TUCKER and GIBBS, JJ.

Dhirajlal Mathuradas for the appellant.

Vishvanath Narayan Mandlik for the respondent.

The facts appear from the following judgment, delivered this day by—

TUCKER, J.:—This suit was brought by the plaintiff, Láldás as representative of his uncle, Parbhudás Náráyandás, deceased, to stop the defendants' interfering with his enjoyment of the usufruct of certain mango trees, which he alleged had been mortgaged to his ancestor by one Soubá in A. D. 1791, and had been subsequently sold to the same ancestor by the son of the said Soubá in A.D. 1801.

The defendants denied that the plaintiff had any right to the trees or their produce; and asserted that the trees had been in their possession, and the produce enjoyed by themselves and those who held under them, till 1862, when the plaintiff had attempted to appropriate the crop, which they had prevented. That the persons said to have sold the trees to the plaintiff's ancestors had no ownership in them.

The Munsif of Nandurbár gave judgment for the plaintiff: as he considered that the ancient documents produced by the plaintiff established his right to the trees in dispute, and that the defendants had failed to make out their ownership.

This decree was reversed, on appeal, by the District Judge of Khándesh, who considered that it was satisfactorily proved that the trees were in the possession of the defendants and those who derived title from them; that the documents on which the plaintiff founded his claim were not proved; and that there was no evidence that the persons who were said to have executed those documents had any right to alienate the trees.

To this decision it has been objected that the District Judge has laid down the law wrongly, in holding that the plaintiff was bound to make out his case, instead of deciding on the whole evidence produced by either party; and that he should not have rejected documents more than thirty years old, on the ground that their execution was not proved, which was contrary to the rulings of the High Court in Special Appeals Nos. 542 and 411 of 1864.

We are of opinion that in a suit instituted in the form of the present action, the first question to be determined was, who was in possession in 1862, at the time when the cause of action is alleged by the plaintiff to have arisen; and the District Judge, having found for the defendants on that issue, very properly treated the case as an action of ejectment by the plaintiff, and cast the onus of proving his title to the trees upon him.

As the documents produced by the plaintiff purported to be more than thirty years old, the District Judge, if satisfied that they were really what they professed to be, viz., ancient documents, and that they came from the proper custody, should have dispensed with proof of their execution; and the Court considers that he acted erroneously in simply rejecting these documents in consequence of defective proof of execution.

He has found, however, that there is no evidence that the

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persons who are said to have sold the trees in dispute had any right to dispose of them; and this being the case, his error in requiring strict proof of the execution of the documents in this case is immaterial, as if the persons who are said to have executed those deeds had no power to sells they could confer no title upon plaintiff.

We are, therefore, of opinion that with the Judge's finding on the issue regarding possession, and on the issue regarding the title of the persons who are said to have made conveyances to the plaintiff's ancestor, his decree was correct, and we affirm that decree with costs on special appellant.

Decree affirmed.

March 27.

Special Appeal No. 62 *of* 1867.

MÁDHAVRÁV T. PÁNSEV and others.....*Appellants.*

BÁPURÁV K. PÁNSE.....*Respondent.*

Pension—Assignment—Compromise—Act VI. of 1849.

A pension having been granted by Government to B. P., in lieu of a *Saranjam* held by his grandfather, a claim to share the same by M. P. and his brothers was compromised, by B. P. agreeing to pay them a certain proportion thereof yearly. The Agent for Sardárs, affirming the decree of the Assistant Agent, found the agreement to be null and void, as an assignment of a future interest in a pension.

Held, that as the pension was not granted "in consideration of past services and present infirmities or old age," the case did not come within the terms of Act VI. of 1849; and that the agreement was a valid one.

THIS was a special appeal from the decision of F. Lloyd, Agent for Sardars in the Dakhan, in Appeal Suit No. 5 of 1865, confirming the decree of F. D. Melvill, Assistant Agent, in Original Suit No. 22 of 1865.

The special Appellants brought the suit to recover Rs. 64 as by agreement, of which the following is a translation :—

"To Chiranjiv Rájáshri Mádhavráv and Rámráv and Balvantráv Trimbak Pánse. From Bápuráv Krishna Pánse. To wit: On a petition being made by my respected father, Krishnaráv Sáheb, to Government, regarding the saranjámi vil-